IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-918

ALICE LOVE, *et al.*,

Petitioners,

v.

DADE COUNTY SCHOOL BOARD, *et al.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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ALICE LOVE, *et al.*,

Petitioners,

v.

DADE COUNTY SCHOOL BOARD, *et al.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled cause on September 3, 1971.

Opinions Below

The opinions of the courts below directly preceding this petition are as follows:

1. The District Court order of June 14, 1971 is unreported and is printed in the appendix hereto, *infra*, p. 1a;
2. The District Court order of June 18, 1971 is unreported and is printed in the appendix hereto, *infra*, p. 5a;

3. The District Court order of June 30, 1971 is unreported and is printed in the appendix hereto, *infra,* p. 8a;

4. The Court of Appeals order of September 3, 1971 is unreported and is reprinted in the appendix hereto, *infra,* p. 10a.

Jurisdiction

The judgment of the Court of Appeals was entered on September 3, 1971 (appendix, p. 10a, *infra*). On November 24, 1971, Mr. Justice Stewart extended the time for filing the petition for certiorari until January 15, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Question Presented

Whether the courts below erred by approving a desegregation plan for Dade County which leaves one-fourth of the black pupils in all-black schools without holding a hearing or making findings with respect to the issues framed in this Court's recent decisions in *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971) and *Davis* v. *School Commissioners of Mobile County,* 402 U.S. 33 (1971), creating a presumption against one-race schools.

Constitutional Provisions Involved

This case involves the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Statement of the Case

Introduction

This is a school desegregation case involving the public education system of Dade County, Florida. Petitioners seek review by this Court of the extent to which the desegregation plan currently in force in that school system meets the constitutional requirements established in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), and *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). In the rulings below which petitioners here challenge, the district court permitted the Dade County School Board [hereinafter, "the Board"] to continue operating its system during 1971-72 essentially in accordance with a desegregation plan which the Fifth Circuit Court of Appeals ordered implemented at the commencement of the 1970-71 academic year.[1]

The Dade County system was segregated by law at the time of *Brown, supra* and continued to operate schools in which no significant desegregation was achieved for many years thereafter. As recently as the 1969-70 academic year, the Board was administering 217 schools enrolling 262,295 students of which 25.8% were black. At that time approximately 57.9% of the total black enrollment attended 85-100% black schools.[2] Though the court of appeals order of August, 1970 reduced the number of virtually all-black

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[1] The Fifth Circuit's exhaustive decision setting out a desegregation plan for Dade County schools is reported in *Pate* v. *Dade County School Board*, 434 F.2d 1151 (5th Cir. 1970), *cert. denied*, 402 U.S. 953 (1971). Earlier proceedings in the same case are reported at 303 F.Supp. 1068 (S.D.Fla., 1969); 307 F.Supp. 1288 (S.D.Fla., 1969) *remanded for further proceedings*, 430 F.2d 1175 (5th Cir., 1970); 315 F.Supp. 1161 (S.D.Fla., 1970).

[2] "Final Desegregation Plan" (March 31, 1970).

schools in the system, statistics on the progress of desegregation for the 1970-71 and the 1971-72 academic years point up the substantial degree to which vestiges of the state-imposed dual system are still present in Dade County. In September, 1970, black students constituted 25% of the total population of which 29% were enrolled in 85-100% black facilities.[3] For the 1971-72 academic year, black students represent 26% of the total enrollment in Dade County Schools. Twenty-three percent (23%) of this total black enrollment attend 85-100% black facilities.[4]

Proceedings Below

On May 26, 1971, the Board filed with the district court a set of proposed modifications, for the 1971-72 academic year, of the desegregation plan mandated by the Fifth Circuit Court of Appeals in August, 1970. By order of June 14, 1971, the district court indicated that it had retained jurisdiction of the Dade County case only "to assure that the school system was continually maintained in a unitary manner." Since, in its view, the system had been declared unitary, the court saw its only responsibility as that of assuring that the school system did not revert to a state-imposed dual system. It granted all parties an opportunity to file responses to the Board's proposed modifications and to be heard at a hearing set for June 18, 1971. On June 16, 1971, petitioners filed objections to the Board's proposals, arguing that the Court should reject suggested modifications which: (1) sought to increase the ratio of white students in three schools which enrolled children of both races in 1970-71; and (2) established boundaries for

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[3] Report to Court (December 4, 1970).

[4] Report to Court (November 10, 1971). These statistics were not available to the Courts below during the most recent proceedings in this case. However, data from the November, 1971 report is set out in the appendix hereto, *infra*, p. 11a for this Court's benefit.

five or six new schools in such a way as to assure all-white or virtually all-white enrollments. Petitioners approved of the Board's proposal to reduce substantially predominantly black enrollments in four schools. However, the objection noted that, since boundary changes for 27 of the 40 schools considered made no significant alteration in the degree of desegregation in those facilities, the Board's proposals constituted "nonaction".

After the June 18, 1971 hearing, the district court immediately entered an order rejecting petitioners' objections and approving the Board's modifications for 1971-72. Furthermore, the court held that thereafter the Board would not be required to petition the court for approval of any proposed modification in its desegregation plan. In the future, the burden would be upon the petitioners and other intervenors to demonstrate to the court a prima facie case of the Board's failure to maintain a unitary school system. On June 22, 1971, petitioners and another intervenor, the Dade County Classroom Teachers' Association (C.T.A.),[5] filed motions with the district court for an evidentiary hearing at which the Dade County system could be re-evaluated in light of new guidelines established by this Court in *Swann, supra* and *Davis* v. *School Commissioners of Mobile County*, 402 U.S. 33 (1971). The motions of petitioners and the C.T.A. set out in great detail, among other matters, the extent to which the Board, the Florida School Desegregation Consulting Center (HEW), the district court and the court of appeals (1) had rejected the use of non-contiguous pairings and groupings of schools and "cross-busing" in attempting to desegregate the Dade County system; (2) had failed to use the system-wide black-to-white

[5] Although the C.T.A. does not join in this petition for a writ of certiorari, it was co-appellant with the petitioners herein before the Fifth Circuit Court of Appeals in case No. 71-2338.

ratio as a starting point in fashioning a desegregation plan; and (3) had not entertained a presumption against the continued operation of one-race schools, in evaluating in 1970 alternative methods for desegregating the Dade County system. The motions asserted that *Swann*, *supra* and *Davis*, *supra*, now required the district court to employ the criteria it rejected in 1970 to determine whether the Dade County system was truly "unitary". Such a reconsideration, petitioners contended, would establish: first, that existing black schools in the system were vestiges of the state-imposed dual system; and, second, that each of these black schools could be desegregated fully in a feasible manner using techniques approved by this Court in *Swann*, *supra*. It was submitted that, in any event, the burden was upon the Board to show why the remaining black schools could not be desegregated based upon *Swann* guidelines.

On June 30, 1971, the district court denied motions of petitioners and the C.T.A. for an evidentiary hearing. Petitioners duly filed Notice of Appeal to the Fifth Circuit from the June 18 and June 30 orders of the district court. On September 3, 1971, without oral argument, the court of appeals summarily affirmed the district court's denial of an evidentiary hearing.

Reasons for Granting the Writ

This case merits review on certiorari because the courts below have permitted one of the ten largest school systems in the nation to continue operating numerous segregated schools without applying the legal principles announced by this Court in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), and *Davis* v. *School Commissioners of Mobile County*, 402 U.S. 33 (1971). Indeed, the desegregation plan in effect in Dade County is explicitly

premised on the Fifth Circuit's reasoning in the *Davis* case which this Court has reversed. There has been no reconsideration of the details of the Dade County plan by either court below since *Swann* and *Davis*, and there are no findings and conclusions which address the important doctrines enunciated by this Court in those decisions. We think that the matter presents so plain a conflict with this Court's recent decisions, and the time available to prepare a new plan for next year is so short, that this Court should grant certiorari and summarily reverse, directing further proceedings conformable to *Swann* and *Davis*.[6]

The decisions of the courts below approve a desegregation plan for Dade County, Florida under which a substantial proportion of black student population will remain indefinitely in virtually all-black schools. Court sanction was given to the desegregation plan in force based upon legal theories that pre-date and clearly conflict with doctrines articulated by this Court in *Swann* and *Davis*. Nevertheless, the courts below have summarily rejected petitioners' contention that these most recent pronouncements establish new constitutional standards against which all prior efforts to dismantle dual, segregated school systems must be measured.

Official Board reports for the 1970-71 and 1971-72 academic years reveal that substantial numbers of students are continuing to attend one-race schools in Dade County. In September, 1970, the Board operated 218 schools, enrolling 239,218 students. Of that total, 179,318 students were white and 59,000 were black (75% white, 25% black).

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[6] This Court has found such disposition appropriate in several recent school desegregation cases. *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970); *Northcross* v. *Board of Education*, 397 U.S. 232 (1970); *Bradley* v. *School Board of Richmond*, 382 U.S. 103 (1965); and *Rogers* v. *Paul*, 382 U.S. 198 (1965). *Cf. Goss* v. *Board of Education of Knoxville*, 403 U.S. 956 (1971).

During that year, 83 schools had 99-100% white enrollments and seventeen (17) schools had enrollments between 85-100% black. Ten of these seventeen schools were 99-100% black, three were 90-94% black and four had between 85-89% black enrollments. These virtually all-black schools enrolled 17,131 or 29% of the total black student population of Dade County.[7] In this current academic year, 1971-72, the Board is operating 218 schools in which a total of 245,242 students are enrolled. Of that number, 182,029 students are white and 62,213 are black (74% white, 26% black). There are 69 schools which have between 99-100% white enrollments and fifteen (15) schools with between 85-100% black enrollments. Ten of these schools have 99-100% black student bodies, three are 91-95% black and two have 87% and 89% black enrollments. Approximately 14,686, or 23% of the black enrollment of Dade County attend these

[7] The 17 virtually all-black schools operated during 1970-71 were as follows:

School	*Grades Served*	*Black Students*	*White Students*	*% Black*
North County	K-6	970	134	88
C.R. Drew	K-6	951	0	100
L.C. Evans	K-6	991	4	99
Holmes	1-3	607	38	94
Liberty City	K-6	820	0	100
Olinda	1-6	863	1	99
Orchard Villa	K-6	1273	0	100
Poinciana Park	K-6	1208	0	100
C.R. Drew	7-9	1247	0	100
Miami-Northwestern	9-12	2265	2	99
Allapattah	6	231	18	93
Earlington Heights	K-6	892	2	99
Floral Heights	1-6	745	0	100
F.S. Tucker	K-3	490	84	85
Miami-Jackson	10-12	2267	282	89
Pine Villa	1-6	1039	69	94
Goulds	1-6	272	47	85
	Total	17,131	681	

fifteen schools.[8] The schools that are virtually all-black in 1971-72 were all over 95% black in 1969 when the first significant steps were taken to dismantle the state-imposed dual system in Dade County. And it is reasonable to assume that substantial numbers of black students will attend one-race schools in the future. For, if the Board's May 26, 1971 proposal is any guide, prospective modifications of the current plan, at best, will have no impact upon desegregation. At worst, such alterations will create additional one-race schools. Furthermore, the district court has so circumscribed its own authority to require further desegregation that it cannot be expected to take any initiative in reducing the number of one-race schools in the Dade County System.

However, this Court's decisions in *Swann* and *Davis* provide guidelines for evaluating the constitutionality of desegregation plans like Dade County's which envision the continued existence of one-race schools. First, "having once found a violation, the district judge or school authori-

[8] The following fifteen schools have virtually all-black enrollments for 1971-72:

School	*Grades Served*	*Black Students*	*White Students*	*% Black*
North County	K-6	1105	111	91
C.R. Drew	K-6	902	0	100
L.C. Evans	K-6	1018	0	100
Holmes	K-3	706	34	95
Liberty City	K-6	829	0	100
Olinda	K-6	884	0	100
Poinciana	K-6	1141	0	100
Orchard Villa	K-6	1274	0	100
C.R. Drew	7-9	1217	0	100
Miami-Northwestern	9-12	2187	4	99
Allapattah	6	301	45	87
Earlington Heights	K-6	889	8	99
Floral Heights	K-6	843	0	100
Goulds	K-6	318	41	89
Pine Villa	K-6	1072	68	94
	Totals	14,686	311	

ties should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *Davis, supra,* at 37. Second, in attempting to achieve maximum desegregation, school boards and courts should recognize the existence of "a presumption against schools that are substantially disproportionate in their racial composition." *Swann, supra,* at 26. And finally, *Swann* holds that:

> Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools and the burden upon school authorities will be to satisfy the court that the racial composition is not the result of present or past discriminatory action on their part. (*Id.* at 26)

Neither of the courts below has ever addressed itself to these issues framed by *Swann* and *Davis*. In its August, 1970 decision which outlined what it viewed as a constitutional desegregation plan for Dade County,[9] the court of appeals explicitly relied upon its *Davis* decision[10] (later reversed in this Court), and three similar cases.[11] In each of those cases, the court of appeals reduced the percentage of black children in virtually all-black schools to between 20-

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[9] *Pate* v. *Dade County School Board*, 434 F.2d 1151, 1152 (5th Cir. 1970).

[10] *Davis* v. *School Commissioners of Mobile County*, 430 F.2d 883 (5th Cir. 1970), *reversed*, 402 U.S. 33 (1971).

[11] *Ellis* v. *Board of Public Instruction*, 423 F.2d 874 (5th Cir. 1970); *Mannings* v. *Board of Public Instruction*, 427 F.2d 874 (5th Cir. 1970); and *Bradley* v. *Board of Public Instruction*, 431 F.2d 1377 (5th Cir. 1970).

25% through the use of equi-distant zoning or contiguous pairing and grouping of schools without doing violence to what it denominated "the neighborhood school concept." Non-contiguous groupings and "cross-busing" were rejected as incompatible with the neighborhood concept; respect for district lines was necessary to maintain a viable neighborhood school system; and the presumption was not against the continued existence of one-race schools but in favor of their existence where disruption of a "neighborhood" would be required to desegregate such facilities. The court of appeals strictly adhered to identical principles in this case. For example, it determined that the desegregation of six north central district virtually all-black schools was infeasible because:

> the attendance zones of all six of these schools are bordered by attendance zones of schools which are either already paired with outlying substantially white schools or are all-Negro themselves. (*Pate, supra,* at 1155).

The court gave no consideration to the possibility of non-contiguous groupings of the six schools with predominantly white schools in the northeast district. And, without making any findings on the times or distances related to student transportation, the court of appeals determined that the Drew Junior High could not be desegregated because it was:

> situated in the northern part of that concentration of the Negro elementary schools in the center of the City of Miami discussed above and is also over three miles from the nearest predominantly white junior high. (*Id.* at 1157.)

As a consequence of these arbitrary limitations imposed upon what techniques could be used to achieve greater

desegregation, the court of appeals decision left approximately 24% of the black student population in virtually all-black schools.

It cannot be denied that *Swann* and *Davis* forthrightly rejected and overruled the "neighborhood school concept" standards articulated by the 1970 Fifth Circuit decisions in this case and other cases. In *Davis*, this Court held:

> A district court may and should consider the use of all available techniques including restructuring of attendance zones and both contiguous and non-contiguous attendant zones. (*Davis* at 37.)
>
> • • •
>
> On the record before us, it is clear that the Court of Appeals felt constrained to treat the eastern part of metropolitan Mobile in isolation from the rest of the school system and that inadequate consideration was given to the possible use of bus transportation and split-zoning. (Id. at 37.)

And *Swann* pointed out that objection to increased transportation based upon opposition to "cross-busing" *per se* was constitutionally irrelevant. Valid objection to transportation could be raised only "when the time or distance is so great as to either risk the health of the children or significantly impinge on the educational process." *Swann, supra* at 30-31.

Yet, in the most recent proceedings in this case, the courts below failed once again to address themselves to the issues raised by *Swann* and *Davis* with respect to the continued existence of one-race schools. Petitioners' motion and that of the C.T.A. for an evidentiary hearing not only correctly pointed up the fact that the Dade County system was presumed unconstitutional in light of this Court's discussion of one-race schools in *Swann* and *Davis*. It

alleged, in addition, that feasible means existed for desegregating all of the remaining virtually all-black schools in the system. Armed with this presumption of unconstitutionality and with allegations that the "greatest possible degree of actual desegregation" had not been achieved in Dade County, petitioners were properly entitled to an evidentiary hearing before the district court. Petitioners submit that until the Dade County system has been subjected to and has met the standards established by *Swann* and *Davis*, neither the Board nor the courts below can legitimately claim to have eradicated all vestiges of the dual system.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should grant certiorari, summarily reverse the judgment below, and direct further proceedings conformable to *Swann* and *Davis*.

Respectfully submitted,

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APPENDIX

Order Dated June 14, 1971

IN THE

UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 69-1020-Civ-CA

HERBERT PATE, *et al.*,

Plaintiffs,

v.

DADE COUNTY SCHOOL BOARD, *et al.*

Defendants.

By order dated June 26, 1970, as modified by order dated July 24, 1970, this Court found the Dade County school system to be a unitary school system in which all vestiges of a state-imposed dual school system had been eliminated. *Pate* v. *Dade County School Board*, 315 F. Supp. 1161 (S. Dist. Fla. 1970). On August 12, 1970 the Fifth Circuit Court of Appeals, after affirming all of the changes in the School Board plan made by this Court and ordering several further changes, stated that "Implementation of these modifications effectively desegregate the Dade County School system." *Pate* v. *Dade County School Board*, 434 F.2d 1151, 1154 (5th Cir. 1970), *cert. den.* 39 U.S.L.W. 3487 (U.S. May 4, 1971). This Court retained jurisdiction to assure that the school system was continually maintained in a unitary manner.

Order Dated June 14, 1971

Once having disestablished the dual school system and eliminated racial discrimination through official action from the system, there remains vested in the authority of this Court only the responsibility to assure that the school system does not revert to a state-imposed dual school system. *See, Swann* v. *Charlotte-Mecklenburg Board of Education*, 39 U.S.L.W. 4437 (U.S. April 20, 1971).

The Court is aware, from the proposed plan as well as from letters from concerned parents, that there are serious problems which must be overcome before the approved plan can be improved to meet everyone's approval. Some of the more obvious problems revolve around the withdrawal of white students from court-ordered desegregated schools and the fear of both violence and the loss of educational quality in these same schools. These problems and others do not present Constitutional issues within the Court's jurisdiction. It is not the Court's responsibility nor its authority to compel or guide the school system into an easier transition. The School Board has the responsibility to make the unitary plan work realistically to the end that quality education is made available to every child in every school of the system. It is the Court's duty to see that this responsibility is met and met in good faith with the dedication necessary to make it work. Without prejudging what may come before the Court in the future, the Court may find that the failure to act by the School Board to correct the deficiencies is prima facie evidence of an attempt to reestablish the dual school system through official action or inaction.

The Biracial Committee, appointed by this Court with the imprimatur of the Fifth Circuit Court of Appeals, has strenuously and diligently advanced the cause of making the unitary system work realistically. Its role in the transi-

tion process gains greater importance and prominence. The Committee is the Court's Committee to the extent that it shall continually review the School Board's attempts to improve the operation of the plan and to assure that racial discrimination does not reappear in the school system by official state action. The Committee is the School Board's Committee for the purpose of continually reviewing the operation of the plan and giving the School Board the benefit of their findings and recommendations. The School Board may use the services of the Committee in any way they deem most helpful. The Court has found the Committee's recommendations and insight into the school system to be extremely intuitive and immensely helpful and has every confidence in their dedication and competency. The School Board is especially urged to keep the Committee fully informed well in advance of (a) proposed acquisition of school sites and construction plans, and (b) contemplated changes in attendance zones.

With this in mind, while awaiting receipt of the mandate from the United States Supreme Court, this Court will hold a hearing on June 18, 1971 at 3:00 p.m. to determine the procedure to be utilized for the future conduct of this cause. All Intervenors not making an appearance through counsel at this hearing will be dismissed from the cause and no further pleadings shall be served upon them. Those Intervenors who desire to be heard at the hearing shall file either their objections to the proposed 1971-72 School Board plan, to the extent that it embodies changes from the modified plan approved by the Fifth Circuit Court of Appeals, (all intervenors having been served by mail on May 26, 1971) or a statement of position on or before 12:00 noon June 17, 1971.

Order Dated June 14, 1971

The Court wishes to advise all counsel that appeals in this case will be processed in accordance with Part III of *Singleton* v. *Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1970). No extensions of time are to be allowed except by order of the panel of the Fifth Circuit Court of Appeals to which the case is assigned. While the record does not have to be reproduced by printing or other similar process, three legible copies shall be filed for the use of each of the members of the panel covering all matters pertinent to the issues raised on the appeal including oral or deposition evidence, exhibits, maps, charts, plans, proposed plans, and all such other matters as are relevant to the issues presented. Counsel are entrusted with the responsibility to collaborate to assure that unneeded or unwanted portions of the record are not included. All questions should be directed to Edward W. Wadsworth, Clerk, Fifth Circuit Court of Appeals by referring to his letter of May 26, 1971.

DONE AND ORDERED at Miami, Florida this 14th day of June, 1971.

C. CLYDE ATKINS
United States District Judge

cc. All counsel of record
All members of the Bi-Racial Committee

Order Dated June 18, 1971

IN THE

UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 69-1020-Civ-CA

HERBERT PATE, *et al.*,

Plaintiffs,

v.

DADE COUNTY SCHOOL BOARD, *et al.*

Defendants.

By order dated June 14, 1971, this Court established a housekeeping requirement that all Intervenors desiring to remain as parties to this cause were required to appear through counsel at 3:00 p.m. June 18, 1971. The following are those parties and their counsel who appeared at the aforesaid hearing and are therefore entitled to remain as parties to this action:

(1) Dade County Classroom Teachers Association
Tobias Simon, Attorney

(2) Alice Love, Carswell Washington, Margaret Washington and American Civil Liberties Union of Florida, Inc.
James W. Matthews and Richard Yale Feder, Attorneys

Order Dated June 18, 1971

(3) Dade County Education Association
Fred Davant, Attorney

(4) Florida Board of Education
Charles Minor, Attorney

IT IS THEREFORE ORDERED AND ADJUDGED as follows:

(a) That all other Intervenors are hereby dismissed from this cause and shall be stricken from the roll of those entitled to service;

(b) That the Motion to Intervene and Objection and Prayer for Opportunity to Prepare and Challenge of Wellington Rolle is denied without prejudice to make a detailed factual presentation which would constitute a prima facie case of the School Board's failure to maintain a unitary school system;

(c) That the objections of Intervenors Alice Love, Carswell Washington and Margaret Washington and the American Civil Liberties Union of Florida, Inc. are denied without prejudice;

(d) That the Statement of Position of the Intervenor, Classroom Teachers Association, is noted and rejected but its thrust is commended to the consideration of the School Board;

(e) That the 1971-72 Pupil Assignment Plan of the Dade County School Board, as adopted by the Board at its meeting of May 19, 1971 and filed in this cause on May 26, 1971 is hereby approved;

(f) That hereafter the School Board shall not be required to petition the Court for approval of any proposed changes in its Pupil Assignment Plan by which it desires

to improve the effectiveness of the Plan. The burden shall be upon the present intervenors, or any other persons hereafter permitted to intervene, to demonstrate to this Court a prima facie case of the School Board's failure to act in accordance with the principles outlined in this Court's order of June 14, 1971. Jurisdiction is retained for this limited purpose.

DONE AND ORDERED at Miami, Florida this 18th day of June, 1971.

C. CLYDE ATKINS
United States District Judge

cc. George Bolles, Esq.
Tobias Simon, Esq.
James W. Matthews, Esq.
Richard Y. Feder, Esq.
Fred Davant, Esq.
Charles Minor, Esq., Florida Board of Education
Mr. Wellington Rolle

Order on Motions For Evidentiary Hearing

IN THE

UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 69-1020-Civ-CA

HERBERT PATE, *et al.*,

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DADE COUNTY SCHOOL BOARD, *et al.*

Defendants.

The Dade County Classroom Teachers Association (CTA) and certain Intervenors have moved this Court for an evidentiary hearing *de novo* to determine whether or not the Dade County School system is unitary. In so doing, the movants contend that *Swann v. Charlotte-Mecklenburg Board of Education*, 39 U.S.L.W. 4437 (U.S. April 20, 1971), dictates guidelines not previously considered in earlier rulings by this Court and the Court of Appeals for the Fifth Circuit in which the Dade County Schools were found to be unitary. The Supreme Court, after *Swann, supra,* denied certiorari by which the Dade County School Board challenged these orders. 39 U.S.L.W. 3487 (U.S. May 4, 1971).

The Court has carefully considered the *Swann* opinion vis a vis the orders of the district court and the Fifth Circuit Court of Appeals. While no cross-bussing was ordered

in the prior approvals of the plan under which the Dade County School system is operated, there is no doubt but that the effect of the district court order as modified by the appellate court was to require the extensive use of bus transportation to achieve the results directed. This Court being of the opinion that an evidentiary *de novo* is not required, the above motions are denied.

The Court reaffirms its earlier direction that the Biracial Committee "shall continuously review the school board's attempts to improve the operation of the plan and to assure that racial discrimination does not reappear in the school system by official state action." Additionally, the School Board is requested to file semi-annual reports during the school year similar to those required in *United States* v. *Hinds County School Board*, 433 F.2d 611, 618-619 (5 Cir. 1970).

ENTERED at Miami, Florida this 30th day of June, 1971.

C. CLYDE ATKINS
United States District Judge

Opinion of United States Court of Appeals For the Fifth Circuit

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 71-2338

HERBERT PATE, *et al.*,
Plaintiffs,

v.

DADE COUNTY SCHOOL BOARD, *et al.*,
Defendants-Appellees,

v.

ALICE LOVE, CARSWELL WASHINGTON, *et al.*,
Intervenors-Appellants,

DADE COUNTY CLASSROOM TEACHERS' ASSOCIATION, INC.,
Intervenor-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

(September 3, 1971)

Before:

BROWN, *Chief Judge,*
MORGAN and INGRAHAM, *Circuit Judges.*

PER CURIAM:

AFFIRMED. See Local Rule 21.[1]

[No separate judgment was entered.]

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[1] See NLRB v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 439 F.2d 966.

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

Northeast District—Elementary Schools

School	Grade	White	Black	Total	% White	% Black
Bay Harbor	K-6	416	0	416	100	0
Biscayne	K-6	503	5	508	99	1
Biscayne Gardens	K-6	761	16	777	98	2
Bryan, W. J.	K-6	801	4	805	99	1
Fienberg, L. D.	K-6	464	6	470	99	1
Fulford	K-6	502	79	581	86	14
Gratigny	K-6	643	4	647	99	1
Greynolds Park	K-6	635	0	635	100	0
Hibiscus	K-6	611	1	612	99	1
Highland Oaks	K-6	669	4	673	99	1
Ives, Madie	K-6	678	1	679	99	1
Natural Bridge	K-6	289	66	355	81	19
Norland	K-6	890	0	890	100	0
North Beach	K-6	680	22	702	97	3
North Miami	K-6	587	37	624	94	6
Norwood	K-6	581	1	582	99	1
Oak Grove	K-6	562	34	596	94	6
Ojus	K-6	372	20	392	95	5
Parkway	K-6	563	5	568	99	1
Sabal Palm	K-6	958	2	960	99	1
South Beach	K-6	457	12	469	97	3
Treasure Island	K-6	433	3	436	99	1
Total (K-6)		13,055	322	13,377	98	2

Northeast District—Secondary Schools

School	Grade	White	Black	Total	% White	% Black
Ctr. for Spec. Inst.-NE	7-12	2	9	11	18	82
Fisher, Ida M. Jr.	7-9	585	182	767	76	24
Jefferson, T. Jr.	7-9	920	147	1067	86	14
Kennedy, J. F. Jr.	7-8	1347	153	1500	90	10
Miami Beach Sr.	10-12	2005	327	2332	86	14
Miami Norland Sr.	10-12	2215	413	2628	84	16
Nautilus Jr.	7-9	1205	188	1393	87	13
Norland Jr.	7-9	1494	169	1663	90	10
North Miami Jr.	7-9	1172	149	1321	89	11
North Miami Sr.	10-12	2711	205	2916	93	7
North Miami Beach Sr.	9-11	2510	281	2791	90	10
Total (7-12)		16,166	2,223	18,389	88	12
District Total	K-12	29,221	2,545	31,766	92	8

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

Northwest District—Elementary Schools

School	Grade	White	Black	Total	% White	% Black
Bunche Park	K, 3-6	248	370	618	40	60
Carol City	K-6	875	164	1039	84	16
Crestview	K-6	703	8	711	99	1
DuPuis	K-6	559	8	567	99	1
Earhart, Amelia	K-6	644	18	662	97	3
Flamingo	K-6	871	2	873	99	1
Golden Glades	K-6	401	400	801	50	50
Lake Stevens	K-6	612	95	707	87	13
Meadowlane	K-6	789	6	795	99	1
Miami Gardens	K-6	425	279	704	60	40
Miami Lakes	K-6	737	0	737	100	0
Milam, M. A	K-6	559	0	559	100	0
Myrtle Grove	K-6	864	195	1059	82	18
North Carol City	K-6	508	429	937	54	46
North County	K-6	111	1105	1216	9	91
North Glade	K-6	1113	78	1191	93	7
North Hialeah	K-6	781	4	785	99	1
North Twin Lakes	K-6	512	0	512	100	0
Opa-locka	K-6	621	317	938	66	34
Palm Lakes	K-6	569	12	581	98	1
Palm Springs	K-6	799	11	810	99	1
Palm Springs N.	K-6	1147	0	1147	100	0
Parkview	K-4	319	226	545	59	41
Pilot House, The	1-6	27	18	45	60	40
Rainbow Park	K-6	238	389	627	38	62
Scott Lake	K-4	439	239	678	65	35
Twin Lakes	K-6	701	0	701	100	0
Walters, Mae	K-6	1064	33	1097	97	3
Total (K-6)		17,237	4,396	21,633	80	20

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

Northwest District—Secondary Schools

School	Grade	White	Black	Total	% White	% Black
Carol City Jr.	7-9	1642	649	2291	72	28
Filer, Henry H. Jr.	7-9	2011	189	2200	91	9
Hialeah Jr.	7-9	1153	124	1277	90	10
Hialeah Sr.	10-12	3494	9	3503	99	1
Hialeah-Miami Lakes Sr.	9-11	1830	189	2019	91	9
Miami Carol City Sr.	10-12	1940	680	2620	74	26
North Dade Jr.	7-9	282	928	1160	20	80
Palm Springs Jr.	7-9	1789	0	1789	100	0
Parkway Jr.	7-9	1214	456	1670	73	27
Youth Oppor. Sch. No.	7-9	65	53	118	55	45
Total (7-12)		15,370	3,277	18,647	82	18
District Total	K-12	32,607	7,673	40,280	81	19

North Central District—Elementary Schools

School	Grade	White	Black	Total	% White	% Black
Arcola Lake	K-3	408	538	946	43	57
Blanton, Van E.	K, 4-6	350	475	825	42	58
Bright, James H.	K-5	768	179	947	81	19
Broadmoor	K-3	543	485	1028	53	47
Curtiss, Glenn	K, 5-6	164	221	385	43	57
Drew, C. R.	K-6	0	902	902	0	100
Edison Park	K, 3-4	363	522	885	41	59
Evans, L. C.	K-6	0	1018	1018	0	100
Franklin, Benj.	K-6	661	3	664	99	1
Gladeview	K, 5-6	122	291	413	30	70
Hialeah	K-4	522	307	829	63	37
Holmes	K-3	34	706	740	5	95
Johnson, J. W.	6	115	30	145	79	21
King, M. L. Prim.	K-2	139	200	339	41	59
Lakeview	K-6	680	19	699	97	3
Liberty City	K-6	0	829	829	0	100
Little River	K, 5-6	338	702	1040	33	67
Lorah Park	K-4	145	500	645	22	78
M. Edison Middle	6	189	231	420	45	55
Miami Park	K-6	878	307	1185	74	26
Miami Shores	K-6	986	8	994	99	1
Miami Springs	K-6	493	43	536	92	8
Morningside	K-5	480	15	495	97	3
Olinda	K-6	0	884	884	0	100
Orchard Villa	K-6	0	1274	1274	0	100
Poinciana Park	K-6	0	1141	1141	0	100

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

North Central District—Elementary Schools (continued)

School	Grade	White	Black	Total	% White	% Black
Primary School "C"	K-2	106	287	393	27	73
Shadowlawn	K-5	317	592	909	35	65
South Hialeah	K-6	1252	6	1258	99	1
Springview	K-6	588	1	589	99	1
W. Little River	K, 4-6	394	615	1009	39	61
Westview	K-3	286	246	532	54	46
Young, Nathan	K, 4-6	190	279	469	41	59
Total (K-6)		11,511	13,856	25,367	45	55

North Central District—Secondary Schools

School	Grade	White	Black	Total	% White	% Black
C.O.P.E. Center	7-12	1	84	85	1	99
Drew, C. R. Jr.	7-9	0	1217	1217	0	100
MacArthur, D. Jr. Sr.	7-12	266	37	303	88	12
Madison Jr.	7-9	642	641	1283	50	50
Mann, Horace Jr.	7-9	810	357	1167	69	31
Miami Central Sr.	9-12	1830	1343	3173	58	42
Miami Edison Middle	7-8	341	577	918	37	63
Miami Edison Sr.	9-12	1237	1055	2292	54	46
Miami Northwestern Sr.	9-12	4	2187	2191	1	99
Miami Springs Jr.	8-9	530	861	1391	38	62
Miami Springs Sr.	9-12	2977	531	3508	85	15
Westview Jr.	7-9	897	374	1271	71	29
Total (7-12)		9,535	9,264	18,799	51	49
District Total	K-12	21,046	23,120	44,166	48	52

South Central District—Elementary Schools

School	Grade	White	Black	Total	% White	% Black
Allapattah	K, 3-5	180	888	1068	17	83
Allapattah Jr.	6	45	301	346	13	87
Auburndale	K-6	915	10	925	99	1
Bethune	K-3	209	432	641	33	67
Buena Vista	K-2	287	135	422	68	32
Carver, G. W.	K-2	281	274	555	51	49
Citrus Grove	1-6	1291	1	1292	99	1
Coconut Grove	K-6	201	294	495	41	59
Comstock	K-3	938	322	1260	74	26
Coral Gables	K, 3-6	346	115	461	75	25
Coral Way	K-6	1524	16	1540	99	1
Dade	K, 4-6	253	326	579	44	56

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

South Central District—Elementary Schools (continued)

School	Grade	White	Black	Total	% White	% Black
Douglas	K-3	407	898	1305	31	69
Dunbar	K, 4-6	298	601	899	33	67
Earlington Hts.	K-6	8	889	897	1	99
Flagler, H. M.	K-6	721	16	737	98	2
Floral Heights	K-6	0	843	843	0	100
Kensington Park	K-6	1258	15	1273	99	1
Key Biscayne	K-6	627	3	630	99	1
Kinloch Park	K-6	712	22	734	97	3
Melrose	K, 4-6	386	384	770	50	50
Merrick	K, 3-6	358	91	449	80	20
Miramar	K-3	268	303	571	47	53
Pharr, Kelsey	K, 4-6	439	493	932	47	53
Riverside	K, 4-6	861	608	1469	59	41
Santa Clara	K-2	204	427	631	32	68
Shenandoah	1-6	1103	0	1103	100	0
Silver Bluff	K-6	724	3	727	99	1
Southside	1-6	382	5	387	99	1
Sunset	K, 3-6	484	147	631	77	23
Tucker, F. S.	K-3	96	463	559	17	83
West Dunbar	K-3	323	463	786	41	59
W. Laboratory	K-6	311	91	402	77	23
Wheatley, P.	3-6	441	528	969	46	54
Total (K-6)		16,881	10,407	27,288	62	38

South Central District—Secondary Schools

School	Grade	White	Black	Total	% White	% Black
Allapattah Jr.	7-8	377	768	1145	33	67
Brownsville Jr.	7	241	612	853	28	72
Carver, G. W. Jr.	7	311	218	529	59	41
Citrus Grove Jr.	8	893	439	1332	67	33
Coral Gables Sr.	10-12	2488	489	2977	84	16
Kinloch Park Jr.	7-9	1652	27	1679	98	2
Lee, Robert E. Jr.	8-9	406	598	1004	40	60
Merrit, Ada Jr.	7	721	474	1195	60	40
Miami Jackson Sr.	10-12	430	2142	2572	17	83
Miami Sr.	10-12	4741	264	5005	95	5
Ponce de Leon Jr.	8-9	909	385	1294	70	30
Shenandoah Jr.	7-9	1928	4	1932	99	1
Washington, B. T. Jr.	9	745	447	1192	62	38
Total (7-12)		15,842	6,867	22,709	70	30
District Total	K-12	32,723	17,274	49,997	70	30

Exhibit 1(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

Southwest District—Elementary Schools

School	Grade	White	Black	Total	% White	% Black
Banyan	K-6	704	0	704	100	0
Blue Lakes	K-6	1041	0	1041	100	0
Coral Park	K-6	898	0	898	100	0
Coral Terrace	K-6	802	2	804	99	1
Cypress	K-6	841	0	841	100	0
Emerson	K-6	942	0	942	100	0
Everglades	K-6	875	1	876	99	1
Fairchild, D.	K-6	542	78	620	87	13
Fairlawn	K-6	831	0	831	100	0
Flagami	K-6	811	2	813	99	1
Greenglade	K-6	738	1	739	99	1
Kendale	K-6	558	1	559	99	1
Kenwood	K-6	799	4	803	99	1
Lee, J.R.E. Ctr.	K-	1	59	60	2	98
Leewood	K-5	733	210	943	78	22
Ludlam	K-6	401	248	649	62	38
Martin, F.C.	K-6	581	355	936	62	38
Olympia Heights	K-6	840	2	842	99	1
Rockway	K-6	818	1	819	99	1
Royal Palm	K-6	966	6	972	99	1
Seminole	K-6	972	2	974	99	1
Silver Oaks	1-6	2	7	9	22	78
Snapper Creek	K-6	797	0	797	100	0
South Miami	K-6	475	171	646	74	26
Sunset Park	K-6	851	8	859	99	1
Sylvania Heights	K-6	741	6	747	99	1
Tropical	K-6	1014	12	1026	99	1
Village Green	K-6	906	2	908	99	1
Vineland	K-5	525	159	684	77	23
Total (K-6)		21,005	1,337	22,342	94	6

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

Southwest District—Secondary Schools

School	Grade	White	Black	Total	% White	% Black
Ctr. for Spec. Inst.-S.W.	7-12	1	2	3	33	67
Glades Jr.	7-9	2013	4	2017	99	1
Miami Coral Park Sr.	10-12	2711	0	2711	100	0
Miami Killian Sr.	9-12	2709	734	3443	79	21
Richmond Heights Jr.	7-9	943	910	1853	51	49
Riviera Jr.	7-9	2095	5	2100	99	1
Rockway Jr.	7-9	1838	0	1838	100	0
Silver Oaks	7-12	23	54	77	30	70
South Miami Jr.	7-9	1023	246	1269	81	19
South Miami Sr.	10-11	1306	126	1432	91	9
Southwest Clinical Sch.	7-9	48	3	51	94	6
Southwest Miami Sr.	10-12	3132	75	3207	98	2
West Miami Jr.	7-9	1894	0	1894	100	0
Total (7-12)		19,736	2,159	21,895	90	10
District Total	K-12	40,741	3,496	44,237	92	8

South District—Elementary Schools

School	Grade	White	Black	Total	% White	% Black
Air Base	K-6	1170	101	1271	92	8
Avocado	K-6	700	18	718	97	3
Bel-Aire	K-4	285	237	522	55	45
Caribbean	K-6	1092	51	1143	96	4
Colonial Drive	K-6	530	216	746	71	29
Cooper, N. K.	K-3	272	364	636	43	57
Coral Reef	K-5	764	188	952	80	20
Cutler Ridge	K-6	1018	19	1037	98	2
Florida City	K-2	154	336	490	31	69
Goulds	K-6	41	318	359	11	89
Gulfstream	K-6	592	22	614	96	4
Howard Drive	K-5	556	171	727	76	24
Leisure City	K-6	1066	9	1075	99	1
Lewis, A. L.	K, 4-6	142	394	536	26	74
Miami Heights	K-6	884	80	964	92	8
Moton, R. R.	K, 5-6	180	314	494	36	64
Naranja	K-6	281	304	585	48	52
Palmetto	K-5	559	179	738	76	24
Perrine	K-4	248	145	393	63	37
Pinecrest	K-6	859	0	859	100	0

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

South District—Elementary Schools (continued)

School	Grade	White	Black	Total	% White	% Black
Pine Villa	K-6	68	1072	1140	6	94
Redland	K-6	676	97	773	87	13
Redondo	K-6	471	17	488	97	3
Richmond	K-6	177	488	665	27	73
South Miami Hts.	K-6	877	41	918	96	4
West Homestead	K, 3-6	216	569	785	28	72
Whispering Pines	K-6	779	1	780	99	1
Total (K-6)		14,657	5,751	20,408	72	28

South District—Secondary Schools

School	Grade	White	Black	Total	% White	% Black
Cutler Ridge Jr.	7-9	1535	417	1952	79	21
Homestead Jr.	7-9	1007	650	1657	61	39
Mays Jr.	7-9	1189	701	1890	63	37
Miami Palmetto Sr.	10-12	3228	419	3647	89	11
Palmetto Jr.	7-9	1677	33	1710	98	2
Redland Jr.	7-9	619	180	799	77	23
South Dade Sr.	10-12	1593	923	2516	63	37
Total (7-12)		10,848	3,323	14,171	77	23
District Total	K-12	25,505	9,074	34,579	74	26
SYSTEM-WIDE TOTAL	K-12	182,029	63,213	245,242	74	26

in the

Supreme Court

of the

United States

OCTOBER TERM, 1971

No. 71-918

ALICE LOVE, et al,

Petitioner,

vs.

DADE COUNTY SCHOOL BOARD, et al,

Respondent.

BRIEF AND APPENDIX IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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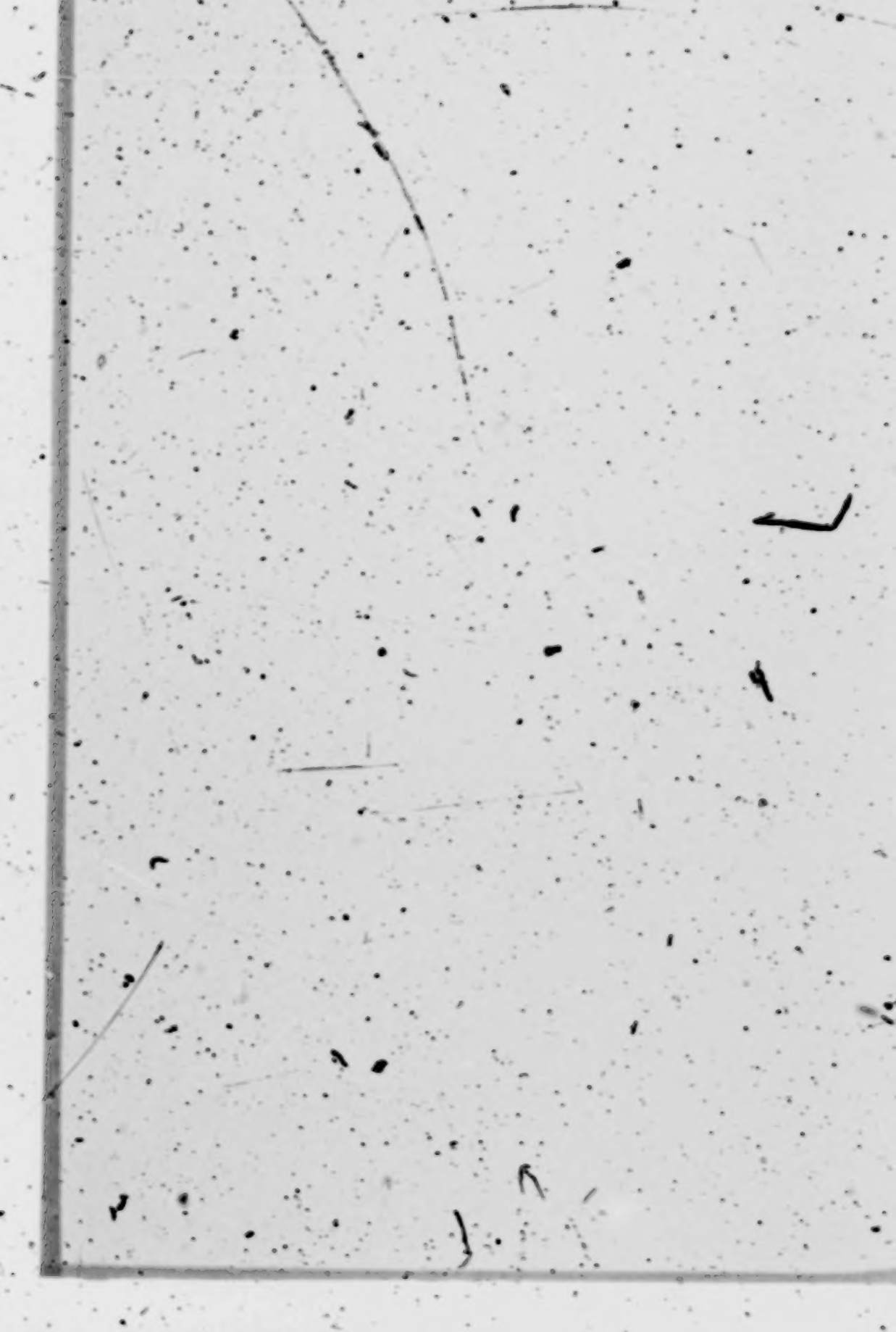
MIAMI REVIEW



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of the

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OCTOBER TERM, 1971

No. 71-918

ALICE LOVE, et al,

Petitioner,

vs.

DADE COUNTY SCHOOL BOARD, et al,

Respondent.

BRIEF AND APPENDIX IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

The petitioners' statement of the case does not adequately reflect the flavor or history of this litigation, as the context for the points now being urged as grounds for the exercise of this Court's discretionary jurisdiction. Without attempting a complete restatement, we offer the following as background and supplement.

The litigation began in 1969 by the filing of a suit against the respondent School Board by a citizen named

Pate, who sought to enjoin the Board from implementing a desegregation plan it had approved for the 1969-1970 school year. The School Board invoked federal jurisdiction over its desegregation efforts by removing the case to the U.S. District Court for the Southern District of Florida. The Board had previously, over a period of approximately ten years, and not under judicial compulsion, taken various measures at a moderate rate to desegregate the Dade County public schools. This history was succinctly reviewed by the District Judge in his first order approving the Board's plan on an interim basis (Appendix 1-6) and further developed in testimony later (Appendix 7-10).

This first plan was recognized by the District Judge as not adequate to meet constitutional standards, and was approved as an interim measure only, with directions for immediate further planning to accomplish a unitary school system. The case progressed through a labyrinth of proceedings including testimony, plans and modifications submitted by the Board, and a number of orders entered by the District Judge desegregating the Dade County public schools in various respects. Finally, in June and July, 1970 the District Court entered orders reviewing a final desegregation plan filed by the Board. The District Judge, while finding that the plan reflected "a substantial effort, made in good faith, to create a unitary school system", held it not yet sufficient, and therefore directed a great many modifications, and declared the plan, as so modified, to constitute a unitary system of public education for Dade County.

On appeal, the Court of Appeals for the Fifth Circuit measured the Board's plan, as modified by the District Court, against the six criteria established by this Court in *Green v. County School Board of New Kent County*, 391

U.S. 430, 20 L.Ed. 2d 716 (1968), and in an exhaustive opinion required extensive further modifications, but only to the student assignment elements of the plan. The other five criteria set forth in *Green* were found to have been met, and the Court of Appeals therefore held that the total plan as modified by its decision would effectively desegregate the Dade County school system. *Pate v. Dade County School Board*, 434 F.2d 1151 (5th Cir. 1970), *cert. denied*, 402 U.S. 953, 28 L.Ed. 2d 123 (1971). (The orders of the District Court referred to above are reprinted in full as appendices to the report of the decision of the Court of Appeals.)

The School Board applied to this Court for review on certiorari, complaining of the summary disposition of the case by the Fifth Circuit, and of the massive extent of the rezoning, pairing and grouping required, which in turn necessarily required extensive additional busing.[1]

This Court denied certiorari on May 4, 1971, and on May 26, 1971 the Board filed with the District Court its 1971-1972 Pupil Assignment Plan, which (as petitioners concede) affirmatively moved to reduce predominantly black enrollment in certain schools. The Board in approving this plan, although its school system had been held fully to meet constitutional standards, further authorized additional busing, and looked to the purchase of still more buses for future desegregation steps, as budget resources would permit (Appendix 11-12). The Board has since continued its planning and efforts for improvements in the county school system, as will be pointed out later in the Argument portion of this brief.

[1] Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, filed in *Dade County School Board v. Herbert Pate*, case No. 936, October Term, 1970.

At this juncture, certiorari having been denied by this Court, and *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 28 L.Ed. 2d 554 (1971) and its companion cases having been decided in April, the District Judge entered his order of June 14, 1971, recognizing his continuing responsibility to assure that the school system did not revert to dual status, and giving all parties an opportunity to object to the Board's 1971-1972 Pupil Assignment Plan (Pet. Appendix 1a). The petitioners at this point first objected to the Plan, and then sought to reopen the entire case for evidentiary hearings *de novo* "to determine whether or not the Dade County school system is unitary": The District Court approved the Board's plan, and on June 30, 1971, after considering the petitioners' contentions in the light of the *Swann* opinion, the Court concluded that no new evidentiary hearings were required and denied the motion (Pet. appendix 8a).

Petitioners appealed, making the same arguments to the Court of Appeals as are now offered to this Court. After a month of consideration upon full briefs, the Court of Appeals affirmed without opinion, referring to its Local Rule 21,[2] and to its explication of that Rule in *N.L.R.B. v. Amalgamated Clothing Workers of America*, 430 F.2d 966 (5th Cir. 1970).[3]

[2]Rule 21 provides: "When the court determines that any one or more of the following circumstances exists and is dispositive of a matter submitted to the court for decision: (1) that a judgment of the district court is based on findings of fact which are not clearly erroneous; (2) that the evidence in support of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by substantial evidence on the record as a whole; (4) that no error of law appears; and the court also determines that an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion."

[3]This case is incorrectly cited in petitioners' appendix. It shows the caution observed by the Fifth Circuit in employing this local rule to affirm without opinion.

ARGUMENT

REASONS FOR DENYING THE WRIT

1. The Court Should Refuse To Review The Adequacy Of The Evidence Supporting The Orders Of The District Court.

Both the District Judge, who had lived with this case for two years, and the Fifth Circuit, certainly the most experienced Court of Appeals in the nation in desegregation cases, have held the Dade County school system effectively desegregated, after monumental efforts by all concerned with the matter since 1969. Furthermore, the orders of the District Court now attacked by petitioners, were entered in full light and after careful consideration of this Court's decisions in *Swann v. Charlotte-Mecklenburg Board of Education, supra* and *Davis v. School Commissioners of Mobile County*, 402 U.S. 33, 28 L.Ed. 2d 577 (1971).

Petitioners now, in attempting to force a reopening of the case, are in actuality asserting that the District Court's order of June 30, 1971, holding that respondent's school system is unitary under the guidelines laid down in *Swann*, is not supported by the evidence. The issue correctly stated, then, is whether the conclusion of the District Court is supported by substantial evidence.

Petitioners focus on the language in *Swann* indicating a "presumption against schools that are substantially disproportionate in their racial composition", and argue that neither of the courts below addressed itself to the issue. This argument simply overlooks the plain terms of the District Court's order of June 30, 1971. There can be no

doubt that the District Court did consider *Swann*, and it is clear that the District Court's denial of petitioners' motion for an evidentiary hearing *de novo* was an adjudication that in the light of the *Swann* case, the respondent had sustained its burden of proof. Thus, the question is nothing more than whether the evidence was sufficient to justify the conclusion of the court. There can be no doubt that under the precedents of this Court, certiorari will not be granted "merely to review the evidence or inferences drawn from it." See *General Talking Pictures Corporation v. Western Electric Company*, 304 U.S. 175, 178, 82 L.Ed. 1273 (1938) and cases cited. See also Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States*, at p. 558. Petitioners would have this Court review hundreds of pages of testimony and exhibit piled upon exhibit to determine whether this mass of evidence contains substantial justification for the considered opinion of a trial court that the respondent had satisfied its burden of proof; that is, the burden of justifying the continued existence of some one-race schools in Dade County and the fact that approximately 24% of the black students in the county would attend black or substantially all-black schools during the 1971-1972 school year. Petitioners ask this Court to substitute the petitioners' evaluation of the evidence for that of the District Court.

A school desegregation case presents a particularly inappropriate instance for Supreme Court review of a trial court's evidentiary determination. This Court recognized in *Swann* that in determining the constitutionality of pupil assignment plans "... we must of necessity rely to a large extent, as this court has for more than 16 years, on the informed judgment of the district courts in the first instance and on courts of appeal." Secondly, the thrust of

this Court's decisions since *Brown I* has been to place primary responsibility on the district courts to fashion equitable remedies, that discretion being limited by the decisional guidelines laid down by this court in such cases as *Swann*. Where, as here, a district court has explored with great thoroughness the possibilities in a particular community for providing desegregated public education and has adopted a complex plan for the operation of a large public school system in a unitary manner, and has held such plan to be consistent with a school board's obligations under the law of the land as most recently stated in the *Swann* case, an application to review the adequacy of the evidence to support the trial court's conclusions, particularly where such court's findings have been completely affirmed by a court of appeals, should not be entertained. It was the function of the Fifth Circuit to review the sufficiency of the evidence, and by its affirmance that court obviously held that the District Court's orders were supported by substantial evidence.

2. The Rulings Below Were Consistent, Rather Than In Conflict, With This Court's Decisions.

We address ourselves now to the alleged "conflict" upon which petitioners seek to invoke the jurisdiction of this Court. As we read the opinions in *Swann* and *Davis*, *supra*, the essence of the cases is the Court's delineation of *permissible* remedial techniques available to the district courts, as part of their traditional equity jurisdition, *after* local school authorities have demonstrably failed in their affirmative obligations to establish a unitary system eliminating racial discrimination. The Court in *Swann* made it very clear that judicial authority "enters only when local authority defaults", and then outlined the range of tools available to the lower courts as corrective devices.

The implicit theory of petitioners' argument is that since non-contiguous zoning, cross-busing, and other remedial techniques may be used by the district courts, therefore they *should* be used — and therefore they *must* be used. It is a doctrinaire, unspoken and specious form of reasoning, which then enables petitioners to claim that since the lower courts in this case did not employ every tool in the kit, their judgments with respect to the unitary character of the Dade County school system must perforce be in "conflict" with this Court's decisions in *Swann* and *Davis*. If petitioners are correct, then the flexibility and breadth of powers in the district courts which have so often been stressed by this Court are made illusory. Instead of being able to cope in differing and innovative ways with the manifold problems of desegregating school systems in different areas, the district courts would be frozen into a checklist procedure of using every weapon in the desegregation arsenal, regardless of local conditions, residential patterns, educational values, or any other factor of local significance. This cannot be what the Constitution commands, or what this Court intends.

The differences between the situations in *Swann* and *Davis*, and the posture of the case at bar, are many and obvious. *Swann* dealt with a recalcitrant school board which had persistently refused to accept its obligations to disestablish a dual school system, and whose elementary school plan had finally to be mandated by the district court. There was no holding that the Charlotte-Mecklenburg board had achieved a unitary system; rather, the judgment of the district court was the reverse. Thus, the court was required to use its equitable powers to fashion a suitable remedy for past wrongs.

As has been shown, the Dade County School Board on its own initiative undertook the task of desegregating its schools long before this litigation began. The Board itself invoked the jurisdiction of the federal courts to protect and aid this effort, and made good faith and substantial efforts to cooperate and comply with the evolving requirements of law in respect to faculty desegregation, majority-to-minority transfers, and other criteria developed by this Court and the Fifth Circuit. The Board's desegregation plan, after modifications by both courts below, was held effective to desegregate the Dade County school system. Indeed, the Board has not been content to rest upon its unitary status even after the latest decisions in its favor, but has continued to work with the Bi-Racial Committee appointed by the District Court, and has created a new department and staff, headed by a district superintendent, especially for the purpose of developing and implementing long-range further desegregation actions.[4]

The point here is, in contrast to the situation in *Swann*, that at the time of the hearings upon petitioners' motion for *de novo* proceedings, there remained with the District Court only the duty to determine if the Board's 1971-1972 Pupil Assignment Plan showed reversion to or toward a state-imposed dual school system. In finding that the motion was without merit, the District Judge as well as the Court of Appeals, had the full benefit of this Court's opinions in *Swann* and *Davis*, coupled with the intimate familiarity of both lower courts with the details and problems of this school system.

[4]Report to Court (November 10, 1971). This was a comprehensive status report on the school system filed in compliance with directions of the District Court. Petitioners used statistics from the report in their appendix. We therefore feel free to reprint in the appendix to this brief the portion showing the establishment and functions of the Board's new desegregation office and staff (Appendix 13-24).

Petitioners attempt to avoid the clear purport of the rulings below by means of two themes. The first consists of their assertion that the Court of Appeals, in its August, 1970 *Pate* decision modifying and approving the Dade County desegregation plan, "explicitly relied" upon its decision in *Davis v. School Commissioners of Mobile County*, 430 F.2d 883 (5th Cir. 1970), which was later reversed by this Court in its decision accompanying the *Swann* case. There are several answers to this. First, it is clear that the Court of Appeals in its *Pate* opinion[5] only referred to its *Davis* decision, among others, as showing the *approach* the court has formulated in reviewing desegregation plans — that is, to measure any given plan against the six criteria set forth in *Green v. County School Board of New Kent County, supra.* The opinion nowhere else refers to the *Davis* case. Secondly, the *Pate* opinion does not speak in terms of the "neighborhood school"; and petitioners' statements that the Fifth Circuit was governed by that concept are only speculation. Finally, when one turns to this Court's decision in *Davis*, it is pretty clear that the Court was concerned with the peculiar geographic division of the races in Mobile, and reversed the Court of Appeals because it had felt constrained to treat the two segments of the system in isolation, resulting in a very high percentage of all-Negro or nearly all-Negro schools. No such split in geographical race location appears in Dade County, and no such easy solution to the problem of one-race schools as simply busing students east-west across a dividing highway.

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[5]See *Pate v. Dade County School Board*, 434 F.2d 1151, 1152 (5th Cir. 1970).

Petitioners' second theme concerns the continued existence of some remaining schools containing all or predominantly one race. We disagree first with their rather extravagant statement that the entire school system is "presumed unconstitutional" by this fact alone. The Court in *Swann* enjoins close scrutiny of such schools, raises a presumption against their continued existence, and places the burden on school authorities to show that assignments involving such schools are genuinely non-discriminatory. But *Swann* very clearly refused to say that mathematical racial balancing is a matter of substantive constitutional right, and just as clearly did say that the existence of some small number of racially disproportionate schools is *not* in and of itself the mark of a system practicing segregation by law.

We next point out that in the past two years, through the combined efforts of the School Board and the lower courts, the percentage of black enrollment remaining in substantially all-black schools (85%-100%) has been cut by over half —from 58% to 23% — as the petition itself discloses. Only 15 of 218 schools remain predominantly all-black, and there is no warrant for petitioners' asssumption that this will continue indefinitely. If anything, the Board's continued efforts beyond the strict limits of its approved system as now operating indicate that racially disproportionate schools will continue to be reduced. In any event, the remaining disproportionate schools have clearly survived the judicial scrutiny of the District Court and the Court of Appeals, in the light of *Swann*, and those courts retain jurisdiction to review further actions of the Board.

CONCLUSION

The District Court and the Court of Appeals have both evaluated petitioners' contentions and have rejected them, with full advantage of the *Swann* guidelines and with comprehensive knowledge of this large and complex school system, its history and its progress. Petitioners have made no showing of real conflict as a basis for review on certiorari, and the petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the above and foregoing Brief in Opposition to Petition for Writ of Certiorari have been served upon all parties required to be served, service having been effected by mail, in accordance with paragraph 1 of Rule 33 of the Rules of the Supreme Court of the United States, to the following named attorneys of record, on the 16th day of March, 1972.

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APPENDIX

[TITLE OMITTED]

ORDER APPROVING INTERIM DESEGREGATION PLAN FOR DADE COUNTY PUBLIC SCHOOLS

In 1956, following the landmark school integration cases of *Brown* v. *Board of Education*, 347 U.S. 483 (1954) and 349 U.S. 294 (1955), a lawsuit was filed in the United States District Court in the Southern District of Florida. The case was styled *Gibson* v. *Dade County School Board* and sought to effect the integration of the Dade County schools. On March 17, 1960 United States District Judge Joseph P. Lieb entered an order providing for the implementation of a freedom of choice plan in the schools. This order also stated

> "It is further ORDERED, ADJUDGED AND DECREED that the Court retains jurisdiction of this cause for such time as may be necessary to put the plan herein provided into operation and for determination as to whether further proceedings are necessary."

From the time of the entry of this order to the present this case has laid dormant. In the interim the integration of the Dade County School System has proceeded at a moderate rate. At the close of the 1968-69 school year there were 42 all negro schools in the system out of a total of 217 schools. On July 1, 1969 the Department of Health, Education & Welfare, charged by Congress in Title 42 U.S.C. §2000 with administering federal funds to aid public education and to assist in the process of desegregating public schools, notified the Dade County School System that it was not in substantial compliance with Title VI of

the 1964 Civil Rights Act which concerns desegregation. At the time of the notification HEW stated:

> "It is expected that the Dade School System will develop and implement a plan which will eliminate the dual school structure in the system by no later than September 1970 and that those steps toward that end which are administratively feasible will be taken by September 1969."

In accordance with this direction the school board obtained the services of the Florida School Desegregation Consulting Center, a federally funded center at the University of Miami, The Center studied the Dade System for approximately 1 month and on July 23, 1969 submitted an Interim Desegregation Plan for the 1969-70 school year. The School Board approved this plan on July 25 with two changes. The rejected the recommendation that there be pairing of two groups of elementary schools in South Dade County and they eliminated the all black Mays Junior-Senior High School. The revised interim plan was approved by HEW on August 4 pending receipt of a final plan by February 1, 1970.

At this point the school system began making preparations to operate under the revised interim plan for the 1969-70 school year. Certain portions of the plan met with public opposition as did certain steps taken to implement the plan. This opposition culminated in the filing of several lawsuits in the Eleventh Judicial Circuit of the State of Florida. The various plaintiffs were the parents of school children in the Dade system and the defendants were uniformly the Dade County School Board. The first of these suits attacked the Board's action with regard to the elimination of the all black Mays school. It is styled *Pate v. Dade County School Board.* The Board's action

was alleged to be arbitrary and capricious and also as taken in violation of Florida Statute 286.011, known as the "government in the sunshine law." This law requires that any official action taken by an agency of the State of Florida be taken in public proceedings and that a written record of such procedings be made. The school board petitioned this Court for removal of the Pate case on August 25, 1969, alleging that the case was one of exclusive federal jurisdiction. At 8:30 a.m. on August 27, the court heard a motion to remand and under the doctrine of *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1963) remitted the case to the State Court for determination of state law issues and retained jurisdiction of the case for determination of any federal questions. At 9:00 p.m. on August 27, Circuit Judge David Popper entered a temporary injunction restraining the School Board from implementing its plan of July 25 as it related to Mays School. The basis of the injunction was Judge Popper's finding that the "government in the sunshine law" had been violated and that the action of the School Board in regard to Mays was void. The effect of this ruling was to require Mays to open as an all black school for the school year 1969-70.

At 3:30 p.m. on August 27, the Court considered the request of the School Board that the Court exercise jurisdiction in the Pate case. Based on the effect of the State Court's ruling, which negated the immediate elimination of an all black school, this Court accepted jurisdiction. Other factors which dictated the exercise of jurisdiction were the issuance of another injunction negating a separate portion of the Board plan and the fact that eventually under the State Court ruling, all action taken by the Board on July 25, when the plan was approved, would be held void as being in violation of the sunshine law. The State

Court injunctions, of course, ran only in favor of the particular plaintiffs before that court. The forseeable result was that after sufficient plaintiffs came before the State Court the entire plan would be voided. The voiding of an interim plan providing for more integration is unquestionably a question for the Federal Courts. Finally, reiterating the last order in Gibson — this court retained jurisdiction over the Dade County School System for the purpose of supervising its desegregation.

The case of Pardo v. Dade County School Board has been removed from the State Court to this Court. The case of Frank v. Dade County School Board haas been filed in this court. Both of these cases concern attacks on aspects of the interim plan and it is ORDERED that they be consolidated with the Pate case in accordance with oral rulings made this morning. It is further ordered that petitions to intervene on the said of the plaintiffs Filed by *Webb, et al., Rosen, et al., Wolff, et al., Eagle, et al.,* and *Reiter, et al.,* as parents of children attending Dade public schools are all granted. IT IS FURTHER ORDERED that petitions to intervene on the side of the defendants filed by the *Dade County Classroom Teachers Association* and *Love, et al.,* are granted.

At this point, after two days of testimony and argument, eighty-four hours before the seventh largest school system in the United States is due to open, this Court must approve a desegregation plan under which this system is to be operated for the 1969-70 school year. This plan must

[1]By virtue of the order of the Acting Chief Judge of the Southern District of Florida, William O. Mehrtens, the case of Gibson v. Board of Public Instruction of Dade County, Florida is transferred to this division and consolidated with the case of Pate v. Dade County School Board Presently in this division.

be formulated in accordance with the Constitutional standards delineated by the Supreme Court and the Fifth Circuit Court of Appeals. In devising such a plan the Court is confronted with a dilemma. It is clear from *Green v. County School Board of New Kent County, Virginia*, 391 U.S. 430 (1968), the most recent *United State of America v. Jefferson County Board of Education et al.*, ____ F.2d ____, (No. 27444, June 26, 1969, 5th Cir.) decision, and numerous other Fifth Circuit decisions that the time for desegregation is now, that delays are no longer tolerable. The case of *Adams v. Mathews*, 403 F.2d 181 (5th Cir. 1968) clearly states "If in a school district there are still all-Negro schools . . . the existing plan fails to meet constitutional standards as established in Green." The only comprehensive plan before the Court is the previously discussed school board Interim Plan for the school year 1969-70. Regrettably, this plan contemplates the operation of 38 all-black schools. Regardless of HEW's approval the plan does not meet Constitutional standards. The Court gave careful consideration the the alternative plans but their implementation, if Constitutional, was not feasible and would impair the operation of the Interim Plan.

At this eleventh hour a balance must be struck. To require immediate desegration of all schools in Dade County would result in chaos. It is therefore the order of this Court that the Interim Plan for desegregation approved by the Dade County School Board at its July 25th meeting for the 1969-70 school year is, in all respects, adopted and approved by this Court. *United States of America v. The Board of Education of Baldwin County, Georgia, et al.*, ____ F.2d ____ (No. 27281, 5th Cir., July 9, 1969). This plan now being the order of this court all persons are enjoined from attack upon or interference in

any way with the operation of such except by appellate review. The School Board is directed to furnish to this Court within 30 days the results of a study delineating the administrative feasibility of total disestablishment of a dual school system at the elementary and junior high levels at the beginning of the second semester of the 1969-70 school year. Such study shall also include the following criteria:

(1) maximum utilization of school buildings; (2) density of population; (3) proximity of pupils to schools; (4) natural boundaries; and (5) Welfare of students.

Henry v. Clarksdale Municipal Separate School District, et al., — F.2d —, (No. 23255, 5th Cir., March 6, 1969).

The Board is also directed to furnish by March 1, 1970 a plan to eliminate the dual school structure in grades 10-12 by no later than September 1, 1970. The Court approves the collaberation of the School Board with the Florida Desegregation Consulting Center and the United States Department of Health, Education and Welfare and directs that the continuing cooperation of these agencies be sought in complying with the court's order.

The Court retains jurisdiction of this cause for the entry of such further orders that may be necessary.

ENTERED This 29th day of August, 1969 at 6:00 p.m. at Miami, Florida.

s/ C. CLYDE ATKINS

United States District Judge

EXCERPTS FROM TESTIMONY OF EDWARD L. WHIGHAM (February 2, 1970)

EDWARD L. WHIGHAM

called as a witness on behalf of the defendant Dade County School Board, having been first duly sworn, was examined and testified as follows:

THE CLERK: State your name and address:

THE WITNESS: Edward L. Whigham, 1410 Northeast Second Avenue.

DIRECT EXAMINATION

BY MR. BOLLES:

Q. What position do you occupy in the Dade County Schools, Doctor?

A. Superintendent of Schools.

Q. And I believe in a previous appearance before this Court you have established how long you have been with the school system and what your qualifications are as an educator?

A. Yes, I have.

Q. Dr. Whigham, I would like to ask you to state what the School Board has done with regard to desegregation commencing in 1959?

A. If I remember those dates correctly, there was a suit here in Dade County, I believe the decision was in December of '58, which declared that section of the Florida Constitution which required separate schools by race to be unconstitutional. It was either the latter part of '58 or the first part of '59.

Several months later, the School Board decided to admit some black children to what had been a white

school. In that fall the school system opened with two schools enrolling black youngsters, two schools that had formerly been white schools.

And then, in the years since, there has been an increase in the number of students in desegregated schools. There has gradually been an increase, this would be a decade, in this decade from '59 to '69.

Q. And can you tell the Court, upon opening the schools in September of 1961, how many schools had been integrated?

A. In '61, I believe, when school opened, in '61, there were five schools that were designated as desegregated. Then additional ones admitted youngsters of the other race during that year; four I believe, to be exact.

Q. Now, do you have —

A. No, no, no. I believe my figure is wrong here. I am thinking of the wrong year. In '61 is your question?

Q. Yes, sir.

A. There were 9 in the fall and there were 5 more during the year, which brought it up to 14.

Q. Now, in 1962 in the fall, how many schools were integrated?

A. The school system reported 17 that year.

Q. And in 1963?

A. 28.

Q. And in October of 1963 how many schools had been desegregated?

A. 42.

Q. Now, for the fall of 1964, state how many schools and staffs had been desegregated.

A. In '64 the school system was reporting 51 schools as desegregated and 9 teaching staffs.

Q. Now, had HEW or any governmental agency made a study of our school system at that time?

A. No, they had not made a study of our school system. As a matter of fact, they did not make a study of our school system until 1969.

Q. Then the opening of schools in 1964 with this amount of desegregation accomplished was done with or without prodding from HEW or other governmental sources?

A. Well, in '64 that's right, because it wasn't until that year that the Civil Rights Act was enacted; yes, sir.

Q. All right sir. Skipping down to the opening of school in 1968 and 1969, how many children were enrolled in the public schools in that school year?

A. 1968-69 — something over 230,000.

Q. and do you recall how many were black and how many were white?

A. I have it noted here. The actual number was a total of 232,272. For the whites it was 175,801 and your blacks 56,471.

Q. And how many schools had a biracial composition at that time?

A. The school system was reporting 134 in that year.

Q. And please state how many all black high schools there were in 1963.

A. In 1963 I believe there were 5, Mr. Bolles.

Q. Now, how many all black high schools are there in the school system today?

A. By all black, I am assuming you mean totally, all the student body is black?

Q. Yes, sir.

A. One that we consider in that category.

Q. Now, what happened to the other four schools — four high schools?

A. These schools were junior-senior high schools — you are speaking of the five high schools in '63?

Q. Yes, sir.

A. Those schools were junior-senior high schools. The senior high student body were merged into other high schools on an integrated basis and the schools were maintained as junior high schools. Of those — let me see if I can get my numbers straight — four of them that were done in this manner, one was done last year as a part of our interim desegregation plan when the Mays Senior High School students were moved to South Dade, and the junior high was integrated.

The plan we had under consideration would complete the desegregation of the remaining junior highs that were part of those four junior-senior high schools that you referred to in '63.

Q. Now, Dr. Whigham, what is the School Board's position with regard to desegregation?

A. I think the School Board's position now is that they recognize the responsibility to desegregate the school system, to establish a unitary school system, and it recognizes the responsibility to desegregate its staff in accordance with the order of this Court, so that this staff is not, so to speak, racially identifiable staff, or so that the schools are not racially identifiable by their staffs.

EXCERPTS FROM MINUTES OF DADE COUNTY SCHOOL BOARD MEETING OF MAY 19, 1971 — FILED MAY 26, 1971

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

I HEREBY CERTIFY that the following is a true and correct copy of action taken by the Dade County School Board at its meeting of May 19, 1971, as appears of record in the minutes of said Dade County School Board:

1. The Board approve for submission to the federal courts as the school boundaries for 1971-72 the attendance zone plan adopted by the Board on February 17, 1971, and modified later for the Vineland-Leewood-Martin-Coral Reef-Palmetto-Howard Drive Elementary Schools and for Coral Gables-Carver-Merrick-Sunset Elementary Schools.

2. The Board authorize the operation of shuttle bus service between the following schools, to commence in the fall of 1971, if sufficient bus services can be made available for that purpose and the required funds can be budgeted:

Lorah Park-Curtis Elementary Schools

Bel-Aire-Perrine-Moton Elementary Schools

Hialeah-Gladeview Elementary Schools

Douglas-Riverside Elementary Schools

3. The Board authorize its attorney to submit its approved attendance plan to the federal district court and pursue litigation directed to final federal judicial decision on establishment of a unitary system in the Dade County Public Schools.

4. The Board, in adopting the 1971-72 school system budget, give consideration to authorizing, if budget resources in a critical year permit, additional busses as required by further steps in desegregation which may be authorized by the Board.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 26th day of May, A.D. 1971.

s/ Constance A. MacMurray

CONSTANCE A. MACMURRAY
Recording Secretary of the
Dade County School Board

SEAL

EXCERPT FROM REPORT OF THE DADE COUNTY SCHOOL BOARD TO THE UNITED STATES DISTRICT COURT — DATED DECEMBER 10, 1971

The Biracial Advisory Committee, consisting of fourteen members, appointed by Judge C. Clyde Atkins, United States District Court, has presented two reports to the School Board: (1) Preliminary Report dated December 7, 1970, and (2) Summary of Priority Concerns with Suggestions dated May 17, 1971.

The May 17, 1971, summary reflected the observations of the members of the Committee since September 1970 and also reemphasized their concerns and recommendations that were previously stated in the December 7, 1970, report.

The following suggestions were offered by the Biracial Committee for consideration of the School Board and the School Administration:

1. To make an all-out commitment of the School Board and the School Administration to the goals of a unitary school system and the desegregation of the schools. This implies even greater involvement of the School Board and the top School Administration within the schools and with parental/community groups throughout the County.

2. To make it known throughout the County School System by every communicative means available that the human and study/working relations have the highest priority in the system.

3. To request an overall and comprehensive philosophy and plan from an appointed joint commission of school people and perhaps student and parental representation under a newly established Deputy or Assistant Superintendent of Schools for Human Resources. This plan should contain means of evaluating, changing and upgrading as necessary, the approach, the procedures and results of: recruiting and selection of new teachers; retraining of administrators and tenured teachers; position relocation and status change to ineffective administrators and teachers; inservice training programs and intensive school faculty/emergency training and development; teacher training (university) and internships; grievance and disciplinary policies, procedures and organization.

4. To establish the position of a Deputy or Assistant Superintendent of Public Instruction for Human Resources with the responsibility of the developing and coordinating of comprehensive plans and implementing procedures to improve the present state of human affairs in our schools.

5. To strengthen the present Human Relations Team by providing additional personnel and funding regardless of availability of federal monies; a change of procedures making it possible for them to influence policy, recommend programs and procedures in schools to assist school people to meet successfully and even capitalize on the human problems of a tri-cultural and multi-ethnic community.

6. To initiate a request to the County Manager to formalize the close liaison and planning of the County and the Schools, especially as it relates to housing, transportation, and parks and school site selection and land usage.

7. To establish a reporting pattern which reflects the tricultural potential of each each school and each district to include student population, teacher-administrative population and any related and special instructional considerations or capabilities.

8. To compensate for any loss of intramural and nonclass activities occurring as a result of split and staggered sessions and reorganization of the school year.

9. To clarify the policy of the regional and national office administering desegregation funds to the effect that Biracial Committees are not in a position to monitor or to approve expenditures.

The School Board and the School Administration have given serious consideration to the above recommendations of the Biracial Committee. In order to implement these recommendations, the School Board established an Office for School Desegregation Planning and Implementation administered by a District Superintendent. This office has been charged with the responsibility to develop a long-range, comprehensive plan for further desegregation of the schools which will assist the School Administration and the School Board in bringing stability to those school centers already desegregated and in maintaining the "unitary school system" status as it has been recognized by the Courts.

It should be noted in the description of the office (see attached) that the specific responsibilities assigned include most of the recommendations of the Biracial Committee.

In addition, the Superintendent of Schools has initiated a request to the County Manager to explore the idea of formalizing a close liaison and planning of the County and the Schools. He has also set up, reviewed and established procedures for reporting and reducing incidents within the schools.

The Division of Instruction plans to conduct a Spanish Language Origin Survey. Information retrieved by this survey will be used principally for the allocation of special staff and material funds, but can serve other purposes.

The heavy demands on transportation make it difficult to give priority to the recommendation to compensate for the loss of intramural and nonclass activities occurring as a result of split and staggered sessions and reorganization of the school year.

We concur with the Biracial Committee that it is difficult to monitor and approve expenditures such as ESAP funds. An effort will be made to keep the Committee informed concerning projects designated to assist in the desegregation process.

OFFICE FOR SCHOOL DESEGREGATION PLANNING AND IMPLEMENTATION

I. Rationale for the Establishment of the Office

Over the last several years, the Dade County School System has moved toward desegregation both on its own initiative and more recently under a series of court orders.

The major moves of the past two years have required the intensive effort of all administrators, plus the involvement and personal dedication to this cause by the School Board, teachers, and other personnel, to effect the required changes.

As a result of these efforts, the federal district court has recognized the Dade County Public Schools as a unitary school system under constitutional mandates.

This decision by the courts, however, does not mean that the issues and problems accompanying the process of desegregation can now be forgotten. There is yet much to be done in the way of critical planning and development of policies, procedures, and programs to bring stability to those schools already desegregated, and to improve further the school system's desegregation status.

County and district administrative staffs have been strained to the point where it is impossible for them to devote the extended periods of time required to undertake the comprehensive planning and implementation activities necessary for furthering the school system's desegregation efforts. Recognizing the need to have this planning and implementation undertaken immediately, the School Board

on July 21, 1971, authorized the establishment of an Office for School Desegregation Planning and Implementation and the appointment of a district superintendent on special assignment to administer the office.

II. Administration of the Office

This office is administered by a district superintendent on special assignment with three support staff members and two clerical staff members.

The district superintendent is responsible directly to the superintendent of schools and is held responsible for county-wide planning and review of the effectiveness of district and school activities in areas related specifically to school desegregation.

It is essential that a close working relationship exist between the Office for School Desegregation and the various district and county administrative offices. The functions of the office do not abrogate the authority and responsibility of the superintendents of the six geographic districts and other county administrative personnel. It remains their responsibility to exert leadership, direction and control for planning activities and full implementation of all School Board policies and regulations concerning desegregation, human and community relations within their districts and departments.

III. Functions of the Office

This office is responsible for the development of a comprehensive long-range desegregation plan for the Dade County Schools which will assist the school administration

and School Board in bringing stability to those school centers already desegregated and in maintaining the "unitary school system" status as it has been recognized by the courts. To do this will require activities as follows:

A. Planning for Specific Actions and Recommendations

The prime function of this office will be the development of a long-range comprehensive desegregation plan for the county. This plan will be comprised of a number of specific actions and recommendations in several interrelated areas which need consideration. This planning shall result in practical and sound procedures for desegregation which can be implemented and maintained through sound administrative practices. Some of these areas are:

1. Attendance Boundaries

   a. Establish guidelines for and direct planning activities of district and central office personnel in establishing attendance boundaries that will be in harmony with a comprehensive desegregation plan.

   b. Consult with appropriate administrative personnel in order to analyze all costs associated with proposed boundary line changes such as transportation required.

   c. Consult with community groups including the Biracial Committee to obtain reactions to proposed boundary line changes.

   d. Review districts' plans and recommend to Superintendent changes in school boundaries.

2. Sites for Future Centers

   a. Review all plans and recommendations for the selection of sites for future school centers to determine if such plans are in accord with overall desegregation plans.

   b. Determine guidelines for the replacement of schools as they become obsolete or in need of extensive maintenance.

   c. Review all plant utilization proposals to determine if they are in harmony with overall county desegregation plans.

3. School Pairings and Groupings

   a. Analyze problems associated with paired and grouped schools to determine what assistance or additional planning, if any, is needed.

   b. Determine which pairing or grouping patterns have special merit for consideration in future desegregation planning.

4. Funding for Desegregation

   a. Study local, state and federal costs involved in the desegregation process.

   b. Work closely with departments of finance and special programs to keep informed and to take advantage of additional sources of funds.

   c. Make recommendations as to reallocation of existing resources—local, state and federal.

d. Review all proposals for requests of funds to support desegregation to determine if the requests include support for staffing, facilities, transportation, materials, equipment or other capital outlay needs considered essential to maintain a unitary school system.

5. Recommendations of the Biracial Committee

a. Serve as the school administration liaison with the Biracial Committee.

b. Review and analyze reports by the Biracial Committee to determine if actions are needed to improve the county's desegregation efforts.

6. Educational Programs

a. Analyze the impact of the county's desegregation on the educational program for pupils.

b. Analyze the effect of the county's educational programs on Spanish-American and other minority pupils.

c. Consult with and make recommendations to the Division of Instruction and district superintendents for program improvements.

7. Court Appearances and Court Decisions

a. Meet as needed with court officials to discuss and testify concerning the county's efforts and policies in desegregation.

b. Meet with court officials to discuss various court decisions and requirements, explore options, and interpret Board policies and guidelines.

c. Consult and work closely with School Board attorneys on all desegregation matters.

8. Staff/Pupil Assignments and Transfers

a. Alert personnel and attendance departments to problems developing in maintenance of staff/pupil racial-ratio and make recommendations for correction or improvement of ratios.

b. Make recommendation in identification/placement of administrative supervisory personnel.

c. Develop policies and make recommendations concerning pupil/teacher transfers.

B. Intensifying Provisions for Human Relations

While various policies and programs may be established to improve desegregation, their success eventually depends upon the human element: the ability of pupils, teachers, administrators, and parents to meet and work together day-by-day in the schools and the community. The Office for School Desegregation should:

1. Determine the need for human relations training as it relates to specific districts and schools.

2. Review and approve district and school proposals for use of human relations funds.
3. Establish priorities and assign activities to the established human relations team.
4. Review and develop policies and guidelines for the improvement of pupil/teacher/parent interaction.

C. Assisting Schools and District Personnel with Crises and School Disruptions

While this area relates to the human relations aspect described above, its main emphasis is on the interpretation and handling of school crises and disruptions once they occur. The Office for School Desegregation will:

1. Review and develop policies and guidelines for the control of student behavior. This includes suspensions/expulsions as they relate to racial issues.
2. Review the planning for emergency procedures in the school in relation to the district and county offices, security, police and community groups and agencies.
3. Review district and individual school plans and procedures to be followed to bring stability to a school following a crisis or disruption.

It is important that district offices keep the Office for School Desegregation fully informed as to all actual and potentially disruptive incidents.

D. Working with Community Agencies

The school system does not stand alone in the process of desegregation. Its plans and decisions affect and are affected by the community and the community agencies surrounding it. It is important that the school system develop and maintain the understanding, support and involvement of the community as it proceeds with desegregation. This effort may be referred to as community relations much as the human relations aspect described above. This involvement with the community begins in the parent group required to be in operation in each school. The responsibility of the Office for School Desegregation is in assisting the school and the district and county offices in maintaining contact with community groups and associations. This effort should be directed toward developing community acceptance of desegregation.